

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

GHADIR AMIRNEZHAD,

Plaintiff and Respondent,

v.

MEHMOOSH GHAYAM,

Defendant and Appellant.

B306361

(Los Angeles County
Super. Ct. No. BC615240)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark V. Mooney, Judge. Affirmed.

Southern California Attorneys, Mac E. Nehoray and Anashe Karapetian for Defendant and Appellant.

Gartenberg Gelfand Hayton, Edward Gartenberg and Milena Dolukhanyan for Plaintiff and Respondent.

Defendant and Appellant Eric Ghayam¹ appeals from a judgment against him for breach of contract and breach of fiduciary duty with respect to an oral partnership he formed with Plaintiff and Respondent Ghadir Amirnezhad to own and operate a restaurant called Garden Café. As part of the judgment, Ghayam was also ordered to pay Amirnezhad's attorneys' fees and costs. Ghayam asserts that the judgment must be reversed for the following reasons: (1) Amirnezhad lacked standing to prosecute certain claims against him, including those resulting in the damages award, because those claims belong to a corporation called The Garden Bakery Cafe Inc.; (2) Amirnezhad failed to verify his complaint as required by section 761.020 of the Civil Code; (3) the trial court's calculation of damages was not supported by substantial evidence; (4) the trial court erred in admitting certain documents not produced in discovery; (5) attorneys' fees were improperly awarded based on evidence introduced, but not admitted, at trial; and (6) the trial court failed to award Ghayam an ownership interest in Garden Café that Ghayam never requested at trial. We disagree with Ghayam and affirm.

BACKGROUND

I. The Parties' Partnership and the Garden Café

Prior to meeting Ghayam, Amirnezhad began development of a restaurant concept. After investing approximately \$125,000 of his own money, he needed outside financial assistance to bring the concept to fruition. Amirnezhad met Ghayam, who already owned a successful bakery, in 2011 and requested his help.

¹ Ghayam was erroneously sued as Mehmoosh Ghayam.

The two men orally agreed to make equal investments in the restaurant, both financially and through their efforts, and be 50/50 owners of the business.

The record reflects at least three efforts to commit the parties' economic arrangement to writing. The first is a May 2012 note in the face amount of \$400,000 signed by Amirnezhad and his wife in favor of Ghayam, secured by a deed of trust on a property owned by Amirnezhad's family trust. The actual amount of the note was to be adjusted according to actual loans or contributions made by Ghayam. Amirnezhad testified that he believed his obligation under the note was limited to contributions that Ghayam made in excess of Amirnezhad's.

The second is a written general partnership agreement, dated September 1, 2011, between Amirnezhad and Ghayam's sister. The partnership agreement states that Ghayam was "acting as a representative and investor" for his sister and that the parties intended to "enter in[to] an equal partnership and contribute equal sums of moneys towards the expenses . . . of the restaurant" Amirnezhad testified that Ghayam's sister, rather than Ghayam, was identified as his partner to protect Ghayam's reputation but that the partnership was always between Amirnezhad and Ghayam. Ghayam's sister testified she made no investment in, nor had any other involvement with, the restaurant other than the purported partnership interest. On appeal Ghayam contends that he, and not his sister, is a 50 percent owner of the business.

The third is the formation of a corporate entity, which Ghayam identifies (with a record citation that does *not* identify the entity) as The Garden Bakery Cafe Inc. It is unclear from the record when this entity was formed or what its current status is,

but it necessarily preexisted the September 2011 written general partnership agreement because it is referenced in that document. Amirnezhad testified that he and Ghayam's sister were 50/50 shareholders in the corporate entity. Ghayam asserts on appeal (without record citation) that he was 50/50 shareholders with Amirnezhad.

After making their oral agreement, the men worked together to further develop the restaurant and it opened in July of 2012. Once it opened, Amirnezhad managed operations, working at the restaurant 70 to 80 hours per week. Ghayam handled its finances, including maintaining the bank accounts and credit card accounts used in connection with the business. Ghayam worked at the restaurant only a few hours per week. At some point Amirnezhad grew concerned about how Ghayam was managing the restaurant's accounts and asked Ghayam for financial records. Ghayam failed to provide them but Amirnezhad received copies of statements directly from Ghayam's bookkeeper in early 2014.

In May of 2014, Ghayam and Amirnezhad got into a disagreement over a broken ice machine. Angry words were exchanged, and Ghayam told Amirnezhad he no longer wished to be involved in the restaurant. Without telling Amirnezhad, Ghayam canceled the credit cards they had used for the restaurant and withdrew the remaining money in the restaurant bank account—approximately \$31,800.

After Ghayam's departure, Amirnezhad continued to run the Garden Café as, in his words, "a sole partnership or something." In 2016, shortly after commencing the action below, he formed a new entity to continue the business of Garden Café called "Soli's Gem." Amirnezhad testified that he owned 100

percent of Soli's Gem at the time of formation. There is no indication in the record that Amirnezhad ever made an accounting of partnership assets to Ghayam or Ghayam's sister.

II. Proceedings Below

Amirnezhad sued Ghayam in March of 2016. His complaint contained seven counts: (1) breach of contract; (2) breach of fiduciary duty; (3) services rendered; (4) unjust enrichment; (5) accounting; (6) quiet title; and (7) declaratory relief. Ghayam did not file a cross-complaint. A bench trial of the matter spanned three days in April and May of 2019. Amirnezhad, Ghayam, and Ghayam's sister each testified. There were no other witnesses. Much of the testimony concerned financial records and the parties' respective interpretations of those records. Contemporary ownership of Soli's Gem and the Garden Café business were not established at trial.

At the conclusion of the trial, the court stated its "preliminary tentative thoughts" which it invited the parties to address in post-trial briefs. The court informed the parties that it was likely to find a partnership existed but that the causes of action it considered viable—breach of fiduciary duty, breach of contract, quiet title, and declaratory relief—would stand or fall on the net balance of financial contributions and withdrawals as between the parties. Because there were "a lot of numbers going back and forth, and a lot of disagreements as to what means what to who," the court implored the parties to reconcile the balance of net contributions between them in their post-trial briefs.

Amirnezhad heeded this request, providing a detailed calculation of the balance with record citations crediting certain contributions of both Amirnezhad and Ghayam. Ghayam, mainly through rhetoric, innuendo, and speculation, urged the court to

disregard any contributions made by Amirnezhad and give credit to Ghayam for each and every contribution he claimed.

The trial court thereafter adopted its tentative conclusion that Amirnezhad and Ghayam were partners. It largely adopted Amirnezhad's mode of calculating their net contributions and awarded Amirnezhad the difference—\$48,746.84—as breach of contract damages. It also awarded Amirnezhad \$18,126.82 for Ghayam's breach of fiduciary duty. Because it found no amounts due from Amirnezhad to Ghayam, the court discharged Ghayam's deed of trust lien against the Amirnezhad family trust's property. Following a subsequent hearing and additional briefing, the court also ordered Ghayam to pay Amirnezhad \$159,792.98 in attorneys' fees and costs.

Ghayam moved for a new trial and the trial court denied his motion. Judgment entered against Ghayam and this appeal followed.

DISCUSSION

I. Standing

Ghayam first challenges Amirnezhad's standing to pursue counts one through five of his complaint. Ghayam correctly asserts that we may consider this challenge because standing may be raised for the first time on appeal. (See *City of Los Angeles v. Metropolitan Water Dist. of Southern California* (2019) 42 Cal.App.5th 290, 310 [citing *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 912].) As the third, fourth, and fifth counts of the complaint were either voluntarily withdrawn or dismissed by the trial court, we need only consider Amirnezhad's standing with respect to the first two: breach of contract and breach of fiduciary duty.

The premise of Ghayam’s standing challenge is that the partnership between he and Amirnezhad was converted into a corporation—The Garden Bakery Cafe Inc.—which resulted in termination of the partnership. On this basis, Ghayam argues, it is The Garden Bakery Cafe Inc. that owns the breach of fiduciary duty and breach of contract claims against him, not Amirnezhad, and therefore only The Garden Bakery Cafe Inc., or Amirnezhad derivatively through it, is entitled to assert them.

The problem with Ghayam’s arguments is that it is counter to findings made by the trial court with respect to the parties’ relations. The trial court found that, in 2011, “an oral partnership was created between the parties.” It further found that Ghayam breached that oral partnership in May of 2014. By implication, the trial court did not find that the oral partnership was converted into a corporation at any time between 2011 and May of 2014.

The existence of a partnership is a question of fact. (*Persson v. Smart Inventions, Inc.* (2005) 125 Cal.App.4th 1141, 1157.) Even in conducting our independent assessment of Amirnezhad’s standing, we are bound by factual determinations of the trial court that are supported by substantial evidence. Ghayam does not argue or point to evidence that the trial court’s finding of a partnership is unsupported by substantial evidence. He does point to Amirnezhad’s testimony that the partnership was converted into a corporation, but does not specify when such a conversion supposedly occurred. The trial court was under no obligation to credit as accurate Amirnezhad’s claim that the partnership ended. Moreover, the parties’ own documents indicate that the partnership had an existence separate from The Garden Bakery Cafe Inc. The September 1, 2011, written

partnership agreement between Amirnezhad and Ghayam's sister reflects that "The Garden Bakery Cafe Inc." already existed and the parties agreement was to "enter in[to] an equal partnership and contribute equal sums of moneys towards the expenses . . . of the restaurant (*The Garden Bakery Cafe Inc.*)" (Italics added.)

In sum, the trial court found that Ghayam and Amirnezhad stood as partners at all times relevant to the complaint. Ghayam has failed to show a lack of substantial evidence supporting that finding. As such, we cannot accept his assertion that their relationship was only that of shareholders in a corporation. Since this assertion is the basis for Ghayam's standing argument, his argument fails. (Cf. *Gherman v. Colburn* (1977) 72 Cal.App.3d 544, 567 (*Gherman*) ["We cannot embrace appellants' argument without redeciding an issue of fact which we have no power to do"].) In other words, Amirnezhad had standing to sue his partner Ghayam for breaching the partnership agreement and breaching the fiduciary duty Ghayam owed to his partner Amirnezhad.

II. Amirnezhad's Failure to Verify His Complaint Does Not Warrant Reversal

Count 6 of Amirnezhad's complaint was for quiet title. Code of Civil Procedure section 761.010 provides that a complaint to quiet title "shall be verified." Amirnezhad failed to verify his complaint. On this basis, Ghayam asserts that the trial court "should have dismissed [Amirnezhad's] complaint or in the alternative the sixth cause of action for Quiet Title." Ghayam failed to raise the issue below, the matter was tried, and the trial court awarded Amirnezhad judgment on his quiet title count. We must now determine the effect of the parties' respective failures.

Ghayam cites no authority in his opening brief that failure to verify a pleading may be raised for the first time on appeal, or even that failure to verify is grounds for dismissal. In his responding brief, Amirnezhad argues that Ghayam waived the issue by failing to raise it below because verification of a pleading is a mere pleading defect; not a jurisdictional requirement. In reply, Ghayam argues that verification was not waived because “[f]ailure to state a cause of action may be raised for the first time on appeal.” (Citing *Bocanegra v. Jakubowski* (2015) 241 Cal.App.4th 848, 855 (*Bocanegra*).)

Ghayam’s challenge fails for at least two reasons. First, his failure to provide authority to support his argument—or the right to raise it—forfeits it. (Cal. Rules of Court, rule 8.204(a)(1)(B); *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287 [appellate court “may disregard conclusory arguments that are not supported by pertinent legal authority”] (*Santa Maria*).) His authority in his opening brief only recites that a complaint for quiet title must be verified. (*Deutsche Bank National Trust Co. v. Pyle* (2017) 13 Cal.App.5th 513, 524.) It does not address any consequences for failing to verify. Ghayam’s authority cited on reply is similarly inapposite. Objection to lack of verification does not assert a failure to state a claim. It asserts a failure to sign a complaint. Verification of a complaint is not a jurisdictional requirement. (*United Farm Workers of America v. Agricultural Labor Relations Bd.* (1985) 37 Cal.3d 912, 915 (*Farm Workers*).) The failure to sign a complaint is not grounds for dismissal. (*Board of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1164; *Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768–769.) *Bocanegra* is therefore of no help to Ghayam.

Second, even if Ghayam had not forfeited the issue by failing to support it here, he waived it by failing to raise the issue in the trial court. As indicated above, Amirnezhad's failure to verify his complaint was a mere defect of pleading, not a jurisdictional defect. (*Farm Workers, supra*, 37 Cal.3d at p. 915; *Security Trust & Savings Bank v. Fidelity & Deposit Co.* (1920) 184 Cal. 173, 176.) Ghayam waived the curable defect of form in the trial court by failing to file a timely motion to strike. (*Zavala v. Board of Trustees* (1993) 16 Cal.App.4th 1755, 1761.) Thus, Ghayam waived any complaint related to the lack of verification on appeal. (*Ibid.*)

III. Balance of Net Contributions as Between Amirnezhad and Ghayam

Ghayam next challenges the trial court's calculation of the parties' relative monetary contributions to the business as unsupported by substantial evidence. These calculations were critical because the measure of Amirnezhad's contract damages was the amount, if any, by which Amirnezhad's contributions exceeded Ghayam's. Ghayam's challenge is unsupported by a single legal authority, again leaving it to us to find law to determine whether reversal is warranted under the circumstances.² We again decline to do Ghayam's work for him

² We acknowledge that Ghayam cited authorities in support of his argument in his reply brief, but these amount to little more than various articulations of the substantial evidence standard. In any event, an appellant may not deprive the opposing party of the ability to respond to relevant authority by waiting until the reply brief to cite cases that should have been raised in the opening brief. Such citations are not considered by the court.

and treat his argument as forfeited. (*Santa Maria, supra*, 211 Cal.App.4th at p. 287.)

Nevertheless, we briefly summarize the trial court’s approach to calculating the parties’ balance of net contributions and explain why we would be compelled to affirm in our substantial evidence review, which requires that we “view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor” (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.)

A. The Trial Court’s Calculation of Ghayam’s Total Contribution

The trial court calculated Ghayam’s total contribution as \$270,000. This amount reflects those contributions claimed by Ghayam which were supported by bank statements and excludes approximately \$151,000 more in claimed contributions that were not supported by bank statements. Because Ghayam provided no bank statements for 2011, the trial court’s analysis gave him no credit for any contributions made in 2011. As Amirnezhad summarized, “the court found that [Ghayam] had not proved unreimbursed contributions in 2011.” Notably, to Ghayam’s benefit, the trial court did not deduct any amounts from the \$270,000 based on testimony and evidence that Ghayam wrote Garden Café checks to himself, his other business, and to pay his personal credit cards that were used to pay Garden Café and other expenses.

(*Magic Kitchen LLC v. Good Things Internat., Ltd.* (2007) 153 Cal.App.4th 1144, 1161.)

As a preliminary matter, Ghayam does not dispute that the trial court properly put the burden on him to prove his unreimbursed contributions. While the burden of proving damages ordinarily lies with the plaintiff (Evid. Code, § 500), that burden may shift where the evidence necessary to establish a fact essential to the claim lies particularly within the knowledge of the defendant. (*Morris v. Williams* (1967) 67 Cal.2d 733, 760; *Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 35.) We infer that the trial court did so here based on testimony from Amirnezhad that Ghayam resisted his efforts to obtain financial information during the term of their partnership and was exclusively responsible (directly or through his accountant and bookkeeper) for managing the various bank and credit accounts used in connection with the business.

Turning to the analysis, the trial court stated that it did its best to calculate the parties' contributions. The task before it was to calculate Amirnezhad's damages. "Where the *fact* of damages is certain, the amount of damages need not be calculated with absolute certainty.' [Citation.] 'The law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation. [Citation.] . . .'" (*Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 396–397.) Substantial evidence supports the trial court's calculation of Amirnezhad's damages.

The trial court was presented with an incomplete set of records in various forms. Significant uncertainty surrounded the meaning of many of these records. Ghayam contends that Exhibits 32 and 37, which were acknowledged and prepared, respectively, by Amirnezhad, should have been dispositive to

show that Ghayam contributed approximately \$284,000 through May of 2012 and \$395,000 through October of 2013. In making this argument, Ghayam ignores that there was evidence before the court drawing into question the accuracy and reliability of the information underlying these documents. Moreover, even if facts are admitted we will not substitute our deductions for the reasonable inferences actually or presumptively drawn by the trial court. (*McDermott Will & Emery LLP v. Superior Court* (2017) 10 Cal.App.5th 1083, 1102 [quoting Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs].) Here, the trial court clearly discounted the probative value of these documents, and we are not at liberty to reweigh the evidence on appeal. (*In re Marriage of Berman* (2017) 15 Cal.App.5th 914, 920.) Moreover, the record reflects good reason for the trial court's skepticism.

Amirnezhad prepared Exhibit 37 based on documents Ghayam provided him reflecting deposits into the Garden Café account. Amirnezhad made it to "see where [he was] coming from" but did not verify it against bank statements. He testified that he did not know if the calculation was "legitimate or not" or even if any of the deposits shown on the list were ever made. He further testified that the cash deposits reflected in the records were just \$54,000 but he had delivered over \$200,000 in sales proceeds during the relevant period.

Exhibit 32 is a register of expenses labeled "payments towards Garden's restaurant" and initialed by Ghayam, Amirnezhad, and Amirnezhad's wife. Under cross-examination on Exhibit 32, Amirnezhad made "a couple of objections" to the amounts shown on the register, but these did not amount to more than "a few thousand dollars." Other than "a couple of payments," Amirnezhad testified that all of the payments were a

“contribution to the Garden Cafe” and confirmed that “the \$284,000 that went and paid for these expenses” was “money Mr. Ghayam deposited into Garden Cafe’s account.”

On redirect, Amirnezhad’s counsel asked him whether he knew how much of the amounts shown in Exhibit 32 had been repaid to Ghayam, to which he responded “no.” He then testified that payments were being made “from the bank statements to pay Mr. Ghayam’s credit cards” but, again, could not say which of the expenses were paid.

Ghayam then offered testimony about how he used the credit cards. He variously used them for personal expenses, for Garden Café, for his other business, and to pay drivers. He testified that handwritten annotations on the credit card statements made by him or his secretary indicated who, or what business, each charge related to. Under direct examination by his own counsel as to how this method of accounting worked, Ghayam spontaneously lamented “what a mess.”

The trial court was entitled to conclude that Ghayam’s self-serving testimony about his 2011 contributions was unreliable and inaccurate. His refusal to account to Amirnezhad concerning records that were within Ghayam’s control, despite dozens of requests, could be viewed by the trial court as an indication Ghayam’s undocumented claims would have been contradicted by an accounting. He testified that he did not take any money out of Garden Café, which he had to admit was false when confronted with checks he had written to himself. In his opening brief, Ghayam avoids discussing the extent to which any contributions allegedly made in 2011 were ultimately reimbursed. The trial court clearly and permissibly concluded that Ghayam failed to meet his burden of proving *unreimbursed* contributions for 2011.

Given the incomplete and disordered state of the records and the conflicting testimony about them, the trial court made an approximation of damages. It gave credit to Ghayam for those contributions that were proved through bank statements and did not give credit for those contributions that were not. At the same time as it denied him credit for the latter, the trial court also did not reduce Ghayam's estimated contribution for reimbursements to him or payments to his credit card or other business reflected in the record.³ Under the circumstances, taking into consideration Ghayam's burden of proof, his responsibility for the business's finances, his status as a partner, and the state of the record, we cannot say that the trial court's approach was error. (Cf. *Matoza v. Matoza* (1954) 124 Cal.App.2d 572, 575–576 [partner responsible for uncertainty in financial records bears risk of adverse determination in judicial accounting; citing *Olmo v. Olmo* (1943) 56 Cal.App.2d 590, 595].) And we certainly cannot say that the alternative approach urged by Ghayam demonstrates a lack of substantial evidence to support the trial court's conclusion.

B. Calculation of Amirnezhad's Total Contribution

We likewise cannot find error in the trial court's calculation of Amirnezhad's contributions. His initial contribution of

³ Ghayam asserts in his opening brief that the trial court deducted from his \$270,000 contribution a check written to himself for \$4,453.63 and half of the \$31,800 he took when he abandoned the partnership in May 2014. This is incorrect. The trial court used those amounts to calculate damages for his breach of fiduciary duty, which Ghayam does not challenge on appeal.

\$124,764.54 was acknowledged by Ghayam in writing. Ghayam does not dispute this amount on appeal. Amirnezhad also presented invoices incurred by Garden Café prior to Ghayam's departure in the amount of \$19,945.89 and testified that he paid them. Ghayam's contrary assertions notwithstanding, this constitutes substantial evidence on which the trial court could find Amirnezhad made such payments.

Finally, Amirnezhad presented an agreement with a contractor resolving \$170,764.54 in Garden Café debt by way of (a) \$93,000 in rent credit at a property Amirnezhad owned; (b) \$32,234.25 in free food at a separate restaurant Amirnezhad owned; and (c) \$45,000 in cash. Amirnezhad explained how the food amounts were tracked in his point of sale system and the rent amounts represented use of his Studio City property at an agreed monthly rate that the contractor declined to pay current as a setoff against work on Garden Café.

Ghayam also notes that the checks Amirnezhad paid the contractor with were drawn on a Garden Café bank account starting in 2016 and not paid from Amirnezhad's personal funds. The record reflects that Ghayam withdrew all remaining cash in the partnership's account when he left in May 2014 and Amirnezhad had to borrow money, work harder, and stretch creditors to stay afloat. We infer from the trial court's decision that it logically credited post-abandonment income exclusively to Amirnezhad's efforts. (Cf. *Moore v. Moore* (1961) 190 Cal.App.2d 129, 133 [affirming trial court's factual determination that all profits earned after partner's abandonment were attributable to remaining partner's "long and arduous hours of work"].)

In short, substantial evidence supports the trial court's calculation of both Ghayam's and Amirnezhad's respective net

contributions to Garden Café. Thus, even if Ghayam had not forfeited his argument by failing to cite relevant authorities as required by the California Rules of Court, we would still be compelled to affirm the trial court's damages calculation based on the record and arguments before us.

IV. The Trial Court Did Not Abuse Its Discretion in Admitting Exhibits 10, 21, and 23

Ghayam argues that the trial court erred in admitting three documents over his objection that Amirnezhad had failed to produce in discovery. We review a trial court's decision to admit evidence for abuse of discretion. (*McDermott Ranch, LLC v. Connolly Ranch, Inc.* (2019) 43 Cal.App.5th 549, 559.)

Ghayam's argument proceeds as follows: Amirnezhad "deliberately did not" produce the subject documents and documents that are wrongfully withheld in discovery are subject to exclusion as a matter of law. First, Ghayam fails to direct us to any finding in the record that Amirnezhad's failure to produce the documents was deliberate. In our review of the colloquy on his objection we are unable to locate any such finding. To the extent that his allegation of deliberate discovery misconduct is supported by the record, Ghayam waived it by failing to provide a record citation. (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; see also Cal. Rules of Court, rule 8.204(a)(1)(C).)

In the absence of any finding that Amirnezhad deliberately withheld the documents, the question before us is whether the trial court abused its discretion in admitting documents requested, but not produced, in discovery where the failure to produce did not amount to willful misconduct. It did not.

Ghayam directs us first to *Pate v. Channel Lumber Co.* (1997) 51 Cal.App.4th 1447 (*Pate*) to show that admission of the documents was “not supported by case law.” First, the language he purportedly quotes from *Pate* does not appear in that decision at all. Second, the relevant holding in *Pate* is that the trial court did not abuse its discretion when it excluded evidence withheld in discovery after finding the proponent “had made an ‘absolute and deliberate attempt to thwart discovery for the purpose of gaining a tactical advantage at . . . trial,’ ” and “ ‘played fast’ ” and “ ‘played games’ ” in the discovery process. (*Id.* at p. 1454.) No such findings were made in the present case. Thus, *Pate* does not compel reversal here as a matter of law.

Ghayam’s second case, *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403 (*New Albertsons*)—an appeal of non-monetary discovery sanctions against New Albertsons—is of no help to him either. Interpreting *Pate* and other decisions, the *New Albertsons* court recognized that “if it is sufficiently egregious, misconduct committed in connection with the failure to produce evidence in discovery may justify the imposition of nonmonetary sanctions even absent a prior order compelling discovery” (*New Albertsons*, at p. 1426.) But, where New Albertsons had objected to producing the evidence at issue, had neither agreed to nor been ordered to produce it, and had engaged in no willful misconduct, the *New Albertsons* court vacated the trial court’s sanctions as an abuse of discretion. (*Id.* at pp. 1429, 1434.)

Here, without a finding that Amirnezhad engaged in willful misconduct regarding the challenged exhibits, Ghayam’s authorities suggest that the trial court would have abused its discretion had it *excluded* the subject documents and not the

other way around. In any event, Ghayam has offered no authority by which we could conclude an error occurred here. In the absence of any error we need not consider the parties' arguments about whether the claimed error was prejudicial. (See, e.g., *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1420.)

V. Ghayam Fails to Show the Trial Court Erred in Awarding Attorneys' Fees Based on a Document Introduced, But Not Admitted, at Trial

Ghayam argues that the trial court erred in awarding attorneys' fees to Amirnezhad because the document giving rise to such right—a note—was merely introduced, but not admitted, at trial. Ghayam raised this argument below and the trial court impliedly rejected it when it granted the fees based on “the Note that was introduced as Exhibit 3 at trial.”

On appeal Ghayam fails to cite any authority to support his position. We treat the argument as forfeited. (*Santa Maria, supra*, 211 Cal.App.4th at p. 287.)

Even if the argument were not forfeited, we find that, under the circumstances, the trial court admitted the note by relying on it in the absence of any objection from the parties, who treated it as in evidence. *Dodson v. Greuner* (1938) 28 Cal.App.2d 418 (*Dodson*) is instructive. That case involved an action against the administrator of an estate for payment on a note given by the decedent. (*Id.* at p. 420.) The defendant-appellant challenged judgment on the note on the grounds that the note had never been formally admitted into evidence at trial. (*Id.* at p. 423.) The appellate court acknowledged that “the record d[id] not show that the trial court announced [that the note was]

‘admitted.’” (*Ibid.*) Nevertheless, it deemed the note admitted where the court and the parties had each treated the note as being in evidence. (*Ibid.*) Specifically, the plaintiff had offered the note and proved the signatures, both parties testified about the note, and the clerk had marked it as evidence. Under these circumstances, the appellate court was unable to “hold it was not admitted in evidence.” (*Ibid.*)

So too here. The note was marked as evidence and counsel for both parties elicited testimony about the note. Amirnezhad testified that he signed the note. Ghayam’s counsel cross-examined him on his compliance with the terms of the note. No party disputed the note’s authenticity or objected that it was inadmissible.⁴ Ghayam does not intimate on appeal that he had any objection to the admissibility of the note.⁵ Under these circumstances, we find, as the court in *Dodson* did, that the note was effectively admitted into evidence. As such, there could be no error in relying on an unadmitted exhibit as Ghayam contends.

⁴ Amirnezhad appears to suggest that the parties in fact stipulated to the admission of the note. We do not consider this argument because Amirnezhad acknowledges that the document reflecting such stipulation does not appear in the record.

⁵ At oral argument Ghayam asserted that the note was not enforceable against Ghayam because it was not signed by him. This contention was not raised in his briefs, nor has he cited to anywhere in the record where he raised this issue with the trial court. He has presented no valid reason for not raising the issue earlier, and it is therefore forfeited.

VI. “Unjust Enrichment”

Ghayam’s final point of error is labeled “unjust enrichment.” Ghayam’s argument under this heading attacks the trial court for awarding Amirnezhad partnership contributions owed by Ghayam but “neglect[ing] to give [Ghayam] his 50% share of the Garden Café.” He argues that the court thereby “took away” his 50% share of the business and demands that we “act swiftly to return [Ghayam’s] property back to [him].” Like so many other of Ghayam’s arguments, this one lacks reasoned argument or citation to any authority and is forfeited. (*Santa Maria, supra*, 211 Cal.App.4th at p. 287.) Ghayam’s declarations of entitlement without a corresponding legal basis amount to an attempt to put on us the burden of identifying the source of his claimed rights. This is not our role. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545–546 [not role of reviewing court to act as “backup counsel” for appellant].)

That said, there is no merit to Ghayam’s assertion that the trial court “neglected to give [him] his 50% share of the Garden Café.” A declaration of Ghayam’s interest in the Garden Café is affirmative relief. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 746, fn. 12 [defining “‘affirmative relief’ ” as award “that goes beyond merely defeating the plaintiff’s recovery”].) The only means by which a defendant may obtain affirmative relief is by filing a cross-complaint. (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 198; see also *Hungarian Hill Gravel Mining Co. v. Moses* (1881) 58 Cal. 168, 176 [judgment declaring defendants owners of property following trial on plaintiff’s quiet title action was error because defendants did not request affirmative relief].)

There is no claim, and no indication in the record, that Ghayam filed a cross-complaint. Thus, it was Ghayam's failure to request relief, not neglect on the part of the trial court, that precluded any award of an interest in the Garden Café. Ghayam's failure to seek relief with respect to any purported "share of the Garden Café" by way of a cross-complaint renders us incapable of providing relief with respect to the claimed share on appeal. (See *United States Golf Assn. v. Arroyo Software Corp.* (1999) 69 Cal.App.4th 607, 623 ["Obviously, appellant cannot challenge a judgment on the basis of a new cause of action it did not advance below. [Citations.]"].)

It appears Ghayam's arguments about subsequent profits and his economic interest in the business is a belated request for an accounting. While we do not pretend to know the strategic considerations at play, it is possible that Ghayam avoided seeking an accounting because his litigation position was always that he was Amirnezhad's lender and not his partner. However, this did not preclude Ghayam from cross-claiming for an accounting in the alternative. (See *Gherman, supra*, 72 Cal.App.3d at p. 559 [defendant disclaiming existence of joint venture entitled to assert protective cross-claim for accounting in eventuality joint venture established].) Without an accounting, many issues that Ghayam now complains about were not explicitly addressed below, including the disposition of the partnership's assets following dissolution⁶ and his right to any

⁶ Ghayam is correct that Amirnezhad's complaint did not seek dissolution but, based on the record before us, it appears that the partnership dissolved as a matter of law when Ghayam abandoned it. Specifically, such abandonment likely amounted to

profits. Because he has failed to show that he timely raised them below, any recourse Ghayam may have with respect to those issues cannot be had by way of this appeal.

DISPOSITION

The judgment of the trial court is affirmed. Costs are awarded to Amirnezhad.

HARUTUNIAN, J.*

We concur:

STRATTON, Acting P. J.

WILEY, J.

a dissociation by Ghayam (Corp. Code, § 16601, subd. (1)) and at least one of our sister courts has concluded that dissolution is automatic upon the dissociation of a partner in a two-person partnership because a partnership cannot continue with just one person. (*See Corrales v. Corrales* (2011) 198 Cal.App.4th 221, 224 [citing Corp. Code, § 16101, subd. (9)].)

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.